

1 with Mr. Westbrook at that point because the Commission hadn't
2 even assigned a channel yet. However, I did take away from
3 there an assurance that I could proceed on my agenda. I went
4 there to see if the site was available and if I could use it
5 and, in essence, he said, yes, it will be when you're ready
6 for it.

7 MR. ZAUNER: I have no further questions.

8 MR. DUNNE: I don't have any redirect, Your Honor.

9 JUDGE FRYSIK: All right, Mr. Morton, thank you
10 very much, you're excused. Okay, anything else?

11 MR. DUNNE: That concludes our testimony, Your
12 Honor.

13 MR. ZAUNER: Well, Your Honor, maybe -- I'm not sure
14 it does conclude their testimony, we still have the question
15 of Mr. Savoie outstanding.

16 MR. DUNNE: Oh, excuse me, I'm properly corrected.

17 MR. ZAUNER: Yeah, and I -- may I speak or do you
18 want --

19 MR. DUNNE: Just go ahead, Mr. Zauner.

20 MR. ZAUNER: Okay, my understanding is that
21 Mr. Savoie has been hospitalized and may be out of the
22 hospital now, but in any case, that he most likely would not
23 be available to testify on Friday and I have indicated to
24 Mr. Dunne that I would cooperate with him in setting a date
25 once we are able to learn Mr. Savoie's availability.

1 MR. DUNNE: That accurately states it, Your Honor, I
2 -- Mr. Savoie indicated to me at the end of last week that he
3 might be available by Friday at the earliest but I have been
4 unable to reach him because apparently he has been in the
5 hospital the early part of this week to confirm that he is
6 available on Friday and what I think probably the best
7 procedure to do would be to perhaps Mr. Zauner and I can, once
8 I find out when Mr. Savoie is available, contact you and
9 figure out a date in which we can reconvene. I presume that
10 it would be a short cross-examination.

11 MR. ZAUNER: Your Honor, I would like to have an
12 opportunity to re-read Mr. Savoie's statement in light of the
13 testimony that's been taken here today and I think there's a
14 possibility I may withdraw my request to have him appear.

15 JUDGE FRYSIK: All right.

16 MR. ZAUNER: At that point, I just can't recall now
17 -- just one second, Your Honor. Yes, you've already ruled on
18 my objections so in that case, the exhibit would just go in as
19 it stands.

20 MR. DUNNE: So you withdraw your request for a --

21 MR. ZAUNER: I'd like to just think about it, let me
22 re-read his statement and --

23 MR. DUNNE: Okay.

24 JUDGE FRYSIK: But how are we going to leave it,
25 are we going in what, in recess until further notice?

1 MR. DUNNE: Why don't we set a date by which --

2 MR. ZAUNER: Oh, yeah, sure -- by the end of the
3 week, is that okay?

4 MR. DUNNE: That's all right by me, if it's all
5 right with Your Honor.

6 MR. ZAUNER: Today is Wednesday, that's two days.

7 JUDGE FRYSIK: A week from today?

8 MR. DUNNE: I'm talking about the end of this week.

9 MR. ZAUNER: Yeah, the end of this week, Friday,
10 today is Wednesday.

11 JUDGE FRYSIK: You're talking about a Friday, next
12 week, right, is that what you're saying?

13 MR. DUNNE: No, I think Mr. Zauner is suggesting he
14 will let us know by this coming Friday which is November 5th
15 whether he needs Mr. Savoie for cross-examination.

16 JUDGE FRYSIK: All right, gets me to my first
17 question, what do we do, recess until further notice?

18 MR. DUNNE: I think that's probably appropriate,
19 Your Honor

20 JUDGE FRYSIK: Okay, how about your case, have you
21 got what -- are you going to have a case, are you going to
22 present a case?

23 MR. ZAUNER: Your Honor, the only thing I wanted to
24 do was to offer the declaration of Nicholas Westbrook which is
25 -- I've had -- it's marked as Mass Media Bureau Exhibit 1 and

1 at this time, with Your Honor's permission, may I have that
2 marked for identification?

3 JUDGE FRYSIK: Sure.

4 MR. ZAUNER: Okay, I provide two copies to the court
5 reporter and a copy to Your Honor. Would you like a copy?

6 MR. DUNNE: I already have it, no.

7 MR. ZAUNER: Your Honor, at this time I'd like to
8 have marked for identification as Mass Media Bureau Exhibit 1
9 the declaration of Nicholas Westbrook, the declaration itself
10 is 7 pages and on the seventh page appears the signature of
11 Nicholas Westbrook and the date 28 October, 1994. The --
12 attached to this declaration are a number of attachments
13 totaling five in number. The exhibit itself is 27 pages in
14 length and, Your Honor, I would like at this time to have that
15 marked for identification.

16 JUDGE FRYSIK: It may be so marked.

17 (Whereupon, the document referred to as
18 Mass Media Bureau Exhibit No. 1 was marked
19 for identification.)

20 MR. ZAUNER: Your Honor, I offer Mass Media Bureau
21 Exhibit 1 into evidence.

22 MR. DUNNE: Well, Your Honor, Mr. Zauner has made it
23 clear to me that he is not going to produce Mr. Westbrook for
24 cross-examination and without an opportunity to cross-examine
25 Mr. Westbrook on the contents of his declaration I would

1 object to the introduction of this exhibit. I think
2 fundamental fairness requires that if this gentleman puts a
3 declaration in without the important contested facts that he
4 be made available for cross-examination.

5 JUDGE FRYSIK: I tend to agree --

6 MR. ZAUNER: But, Your Honor, I think we've already
7 discussed this exhibit and earlier I had made the point that I
8 believe that the testimony of Westbrook was necessary to this
9 case and that it was therefore incumbent upon Family to
10 produce him pursuant to its burden of proceeding and burden of
11 proof and --

12 JUDGE FRYSIK: Yeah, but I've already got that
13 established --

14 MR. ZAUNER: And we've already got that established
15 and we discussed that.

16 JUDGE FRYSIK: -- and the --

17 MR. ZAUNER: Yeah --

18 JUDGE FRYSIK: -- a letter had been received by the
19 Commission from Mr. Westbrook making certain allegations.
20 These allegations, of course, have been -- an attempt was made
21 to rebut those allegations today so I'm -- Mr. Dunne is within
22 his right to ask that a witness be available for cross-
23 examination if he's going to give testimony under oath.

24 MR. ZAUNER: Yeah, remember, Your Honor, I indicated
25 that the reason I was offering this or prepared this was in

1 the hope that it would forego or at least make it not
2 necessary for either one of us to call Mr. Westbrook and I
3 understand Your Honor has in effect already ruled that he will
4 not receive Mass Media Bureau Exhibit 1 and I'm offering it
5 now so it will go along with the record as an offer of proof.
6 The only exception to that is that I would request that Your
7 Honor do receive into evidence Attachment 1 to Mass Media
8 Bureau Exhibit 1 which is the legal notice that was placed in
9 the newspaper announcing the fact that Family Broadcasting was
10 proposing to use the Mt. Defiance site and that's a single
11 page which is page 8 of the Mass Media Bureau Exhibit 1.

12 JUDGE FRYSIK: All right, I'll reject your
13 Exhibit 1 except for Attachment 1 --

14 (Whereupon, the document previously marked
15 for identification as Mass Media Bureau
16 Exhibit No. 1 was rejected except for
17 Attachment 1 which was received into
18 evidence.)

19 MR. DUNNE: Shall we renumber that Mass Media Bureau
20 Exhibit 2, Your Honor, so there's not confusion in the record?

21 JUDGE FRYSIK: You want me to break up your
22 exhibit?

23 MR. ZAUNER: I think it's clear, I mean, it's page 8
24 of Mass Media Bureau Exhibit 1 would be the only thing
25 received, Mass Media Bureau Exhibit 1.

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER
In the Matter of
Family Broadcasting, Inc.

Name

MM Docket No. 94-20

Docket No.

Washington, D.C.

Place

November 2, 1994

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 6 through 86, inclusive, are the true, accurate and complete transcript prepared from the reporting by Barbara Lord in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

11/13/94

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